

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Employment

Judge Garr M. King partially denied a defense motion for summary judgment in a worker's compensation retaliation case. Plaintiff was terminated after receiving a work release from his doctor; in light of comments made about the plaintiff's work restrictions and the timing of the decision, Judge King held that genuine factual issues precluded summary judgment. However, Judge King granted the motion relative to a claim for violation of the Family Medical Leave Act (FMLA) given the absence of sufficient evidence of any causal link between the termination and the employer's denial of plaintiff's request for leave to attend to his children while his wife was in the hospital. Judge King held that a six month gap was too long to sustain any inference of discriminatory intent, particularly in light of the events surrounding plaintiff's own medical leave. Holmes v. Boise Cascade Corp., CV 02-1591-KI (Sept. 25, 2003).

Plaintiff's Counsel:

Michael D. Callahan

Defense Counsel:

Jeffrey A. Johnson

! Plaintiff claimed that he was terminated after taking medical leave for cancer treatments. He filed an action against his former employer and his employer's parent corporation under a joint employment theory.

Judge Anna J. Brown applied the test from a recent Ninth Circuit decision in Moreau v. Air France, 2003 WL 22119719, and held that the parent corporation could not be held liable for any claims of employment discrimination because it exercised no control over hiring, firing or the day to day operations of its subsidiary.

The subsidiary's motion for summary judgment was granted in part and denied in part. Judge Brown held that genuine factual issues existed relative to the basis for plaintiff's termination, particularly in light of the timing between plaintiff's exercise of FMLA leave rights and the termination decision. However, the court granted the defendant's motion against the

OFLA retaliation claim since there is no private right of action under the Oregon statute. In addition, Judge Brown rejected plaintiff's breach of contract claim because, while the employee handbook explained FMLA rights, it also affirmatively stated that employment was at-will. Jacoban v. Fred Meyer Stores, Inc., CV 02-1550-BR (Opinion, Oct. 16, 2003).

Plaintiff's Counsel:

Richard D. Halton

Defense Counsel:

David H. Wilson

Civil Rights

Foster parents and their children filed a class action against the state of Oregon seeking to challenge the state's decision to implement an across-the-board 7.5% reduction in adoption assistance payments for children with special needs. Plaintiffs asserted claims under 42 USC 1983 on the basis that the state's action violated their federal rights under the Social Security Act (SSA) and the Due Process clause.

Judge Aiken held that the

2 The Courthouse News

relevant SSA provisions did not unambiguously confer federal rights to benefits, thus, there is no viable cause of action under §1983.

Judge Aiken noted that the plaintiffs have an alternative remedy because they may seek to directly enforce their adoption assistance agreements through private actions. ASW v. Thorne, CV 03-6038-AA (Oct. 2003).

Plaintiffs' Counsel:

Arthur C. Johnson

Defense Counsel: David Leith

Environment

The EPA incurred over \$460,000 to clean up toxic waste emitted from a precious metals reclamation warehouse. The government then filed an action against the property and property owner under CERCLA to recover its costs.

Judge Anna J. Brown conducted a number of hearings and ultimately determined that she lacked jurisdiction over the individual property owner because he was incompetent when the action commenced. The court also rejected the government's attempts to substitute a conservator for the individual. However, Judge Brown did allow the action to proceed against the property in rem since the owner had actual notice and obtained counsel to defend the action against the property.

On the merits, the court denied the defense challenges to the timeliness of the action under CERCLA's statute of limitations. Judge Brown held that the government's actions were consistent with the National Contingency Plan and that the government's real property lien should be enforced. United States v. Grant, CV 00-1536-BR (Opinion, October, 2003).

Plaintiff's Counsel:

Neil J. Evans (Local)

Defense Counsel: Paul Hart

Personal Jurisdiction

An Oregon Corporation which holds a registered trademark for a name associated with chiropractic tools it manufactures filed an action for Cyberpiracy under the Lanham Act against an Alabama resident. Plaintiff claims that the defendant violated its trademark rights when it used its registered name to market a dietary supplement. While the defendant maintained an interactive website with the plaintiff's trademark in a domain name from 1999-2002, it made only one internet sale during that time to a non-Oregon resident. After 2002, defendant disabled the on-line ordering function of

the site.

Plaintiff sent a letter to the defendant threatening legal action for trademark infringement. Thereafter, the parties engaged in correspondence relative to possible settlement and sale of defendant's registered domain name to the plaintiff. These negotiations failed and plaintiff filed the action in federal court in Oregon.

Judge Janice Stewart dismissed the action for lack of personal jurisdiction. Judge Stewart noted that the defendant made no Oregon sales and had no Oregon contacts outside of his negotiations with the plaintiff over possible sale of the domain name in settlement of a potential legal action. The court rejected plaintiff's argument that the action fell under the "effects" test for specific personal jurisdiction under the Ninth Circuit's decision in Panavision, because there was no evidence that the defendant set up the website with the intent to harm the plaintiff. Innovative Machinery Packaging & Converting, Inc. v. Heritage, CV 03-211-ST (Findings & Recommendation, June 16, 2003; Adopted by Order of Judge Anna J. Brown, July 11, 2003).

Plaintiff's Counsel: Carl Crowell
Defense Counsel:

Charles Carreon